

AUG 8 1977

MICHAEL RODAK, JR., CLERK

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1976

\_\_\_\_\_  
No. 77-45  
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ROBERT CALHOUN,

*Appellant,*

*against*

THE STATE OF NEW YORK, et al.,

*Appellees.*

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**MOTION TO DISMISS OR AFFIRM ON BEHALF  
OF APPELLEE, STATE OF NEW YORK**

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**MOTION TO DISMISS OR AFFIRM ON BEHALF  
OF APPELLEE, STATE OF NEW YORK**

Appellee, State of New York, respectfully moves the court pursuant to Rule 16(a)(b) to dismiss this appeal on the ground that appellant has failed to raise a substantial federal question and, in part, for want of jurisdiction.

**Opinions Below**

The decision of the Court of Appeals is reported at 553 F. 2d 93 and is reproduced at pages 1-3 of the appendix to the Jurisdictional Statement (hereinafter J.S.). The unreported memorandum and orders of the United States District Court, Eastern District of New York (JUDD, J.) are reproduced at pages 4-7 of the appendix to the Jurisdictional Statement.

### Jurisdiction

The opinion of the United States Court of Appeals for the Second Circuit is dated February 10, 1977. A Notice of Appeal to the United States Supreme Court was filed on or about March 3, 1977. Appellant invokes the jurisdiction of the court pursuant to 28 U.S.C. § 1254(1).

### Question Presented

Was this action pursuant to 42 U.S.C. § 1983 against the State of New York and the Supreme Court of New York properly dismissed?

### Statement of the Case

This case was instituted by the service of a summons and complaint on the office of the Attorney General of the State of New York seeking monetary damages against the State of New York, the Supreme Court of New York, Queens County, Chief Clerk Kaliski, Mr. Krumsiek, Court Officer Reed, Alice M. Smith and George M. Winston\* (Appendix A, pages 5-10).

Prior to the time for the appellee State of New York to move or answer, the District Court *sua sponte* on September 26, 1975 and December 4, 1975 respectively, dismissed the appellant's complaint (pp. 4-8, Appendix to J.S.) and denied appellant's motion for a default judgment against the State of New York.

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\* Kaliski, Krumsiek and Reed are apparently State Court personnel, were not served nor appeared in this action. Alice M. Smith, who is the appellant's former wife, and George M. Winston, her attorney in the State divorce proceedings, also have not been served or appeared in the federal proceedings below.

The appellant filed his appeal to the Court of Appeals for the Second Circuit on or about October 3, 1975 for the dismissal of the complaint.

In the appendix filed by the appellant with the Court of Appeals for the Second Circuit *inter alia* were the judgment of Justice Joan Marie Durante of the Supreme Court of the State of New York, Queens County, dated September 9, 1975, reciting jurisdiction over the appellant and granting a divorce against him in an action entitled *Alice M. Calhoun\** against *Robert Calhoun, Jr.* and a subsequent order of Justice Edwin Kassoff, after a hearing in the same action, dated February 24, 1976, granted a motion by Alice M. Calhoun against appellant holding him in contempt of court and denying appellant's cross-motion to set aside the judgment of Justice Durante (pp. 8-15, Appendix to J.S.). Under New York State practice both the judgment and order are appealable as of right.\*\*

### ARGUMENT

**Appellant has failed to raise a substantial federal question requiring plenary consideration by this Court.**

The only "person" served in this action was the Attorney General of the State of New York, in behalf of the defendant State of New York. It is basic that an action against the State cannot be maintained under the Civil Rights Act as well as the ban against review of the State court judgment in the district court. Properly therefore the District Court *sua sponte* dismissed the complaint under the doctrine of *Monroe v. Pape*, 365 U.S. 167 (1961) and *Huffman v. Pursue*, 420 U.S. 592 (1975). Appellant then, perhaps suggested by the *obiter dicta* in the District Court's memo-

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\* Alice M. Calhoun is apparently the Alice M. Smith named in this action.

\*\* New York State Civil Practice Law and Rules.



randum, sought his remedy to challenge the decree of divorce in State Court (pp. 6, 8-10, Appendix to J.S.). The appellant's failure to set aside the decree of divorce is apparently the subject of an appeal in the State Courts where his criticism of the decree can be fully aired by him.

No individual employee has been served or appeared in this case and, as appropriately held by the court below, the State of New York may not be sued for money damages (pp. 1-3, Appendix to J.S.).

### CONCLUSION

**The appeal should be dismissed or, in the alternative, the decision of the Court of Appeals for the Second Circuit affirmed.**

Dated: New York, New York, August 5, 1977.

Respectfully submitted,

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
*Attorney for Appellee*  
*State of New York*

SAMUEL A. HIRSHOWITZ  
First Assistant Attorney General

HAROLD TOMPKINS  
Assistant Attorney General  
*of Counsel*

### APPENDIX A.

#### Summons and Complaint.

#### UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF NEW YORK

Civil Action File No. 75C 1565  
(JRB)

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ROBERT CALHOUN JR.

Plaintiff

v.

THE STATE OF NEW YORK, its agents SUPREME COURT OF  
NEW YORK, QUEENS COUNTY, CHIEF CLERK KALISKI, Mr.  
KRUMSIEK and COURT OFFICER REED.

AND

ALICE M. SMITH and GEORGE M. WINSTON

Defendant

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#### SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon Robert Calhoun Jr. plaintiff's attorney, whose address 111-11 132nd Street, Jamaica, New York 11420 an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive

*Appendix A.*

of the day of service. If you fail to do so judgment by default will be taken against you for the relief demanded in the complaint.

ROBERT CALHOUN, JR.  
*Deputy Clerk.*

[Seal of Court]

DATE:

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

*Appendix A.*

## UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

DOCKET NUMBER . . . . .

ROBERT CALHOUN JR.,

Plaintiff,

—against—

STATE OF NEW YORK, its agents SUPREME COURT OF NEW YORK, CHIEF CLERK KALISKI, MR. KRUMSIEK, COURT OFFICER REED

AND

ALICE M. SMITH, and GEORGE M. WINSTON

Defendants

## COMPLAINT

This action arises under the Constitution Of The United States Of America the Fourteenth Amendment, the Civil Rights Act Of 1964 as Amendment, Criminal Code 20, 18 US 241, 242, 42 US 1983, Civil Rights Act etc. here in after more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

Plaintiff claims that the State of New York did deny him due process of law on September 19, 1975 when the Supreme Court of New York at 88-11 Sutphin Boulevard, Jamaica, New York refused to accept his papers for filing.

Plaintiff claims that the State of New York did violate his constitutional rights when the Supreme Court of New

## Appendix A.

York issued a judgment against him without allowing him the opportunity to be heard.

Plaintiff claims that the State of New York denied him equal protection of the law when it refused to allow him to contest the divorce decree.

Plaintiffs claims that the State of New York denied him his right to petition the government when Court Officer Reed would not allow him to speak to Judge Livoti about the refusal of the clerks to accept his papers for filing.

Plaintiff claims that Chief Clerk Kaliski violated his Constitutional Right to be heard when he refused to accept his papers for filing.

Plaintiff claims that Mr. Krumsiek did also violate his right to be heard.

Plaintiff claims that Alice M. Smith and George M. Winston did violate his right to be heard when they conspired to deny him the opportunity to contest the divorce.

Plaintiff claims that Alice M. Smith did invade his privacy and seized his personal property and used it against him.

Plaintiff claims that George M. Winston did interfere with his marriage infringing on his contract and separating him from his wife by coercing her against him.

Plaintiff claims that the State of New York and George M. Winston did misuse the legal process in obtaining and granting the divorce decree.

Plaintiff begs the Court to grant him twenty five million dollars for the personal injury inflicted upon him by this gross act of deceit, fraud and premeditated turpitude.

Plaintiff begs this Court to find that New York State in violation of its own laws and liable to the plaintiff for punitive as well as personal damages of two thirds of the total damages. First because the State of New York aided and abetted the culprits in this conspiracy and that they by threat of force did deny the plaintiff's right to petition for redress. This to the plaintiff's beliefs is *enslavement*.

## Appendix A.

Plaintiff further pleads to this Court to restrain and prohibit George M. Winston from ever perpetrating such an act again. Plaintiff ask that his liability be fixed at two thirds of the remaining one third of the damages prayed for.

Plaintiff now ask the Court to supervise the execution of its judgment in action.

Plaintiff, *Robert Calhoun Jr.* submit this humble plea for your most kind consideration and your most honest judgment.

Signed ROBERT CALHOUN JR.  
Robert Calhoun Jr.

Notary

On this day of *September 21, 1975* came *Robert Calhoun Jr.* swearing to the statements made in this complaint and requesting that I witness his signing of it as it now stands.

Signature of Notary WILLIAM MULLER  
Date September 22nd, 1975

WILLIAM MULLER  
Commissioner of Deeds  
City of New York 4-1293  
Certificate filed in New York County  
Commission Expires March 1, 1976

Copies to:

Attorney General Of The State  
Of New York  
2 World Trade Center  
New York, New York



*Appendix A.*

George M. Winston Esq.  
108-18 Queens Blvd.  
Forest Hills New York 11375

Alice M. Smith  
111-11 132nd Street  
Jamaica, New York 11420

*Appendix A.*

## AFFIDAVIT OF FACTS

ON FRIDAY SEPTEMBER 19, 1975, I went to the Supreme Court Of New York located at 88-11 Sutphin Boulevard, in Jamaica, New York to file a motion to a judgment that I had received on Monday September 15, 1975. I went to the Special Sessions Office and offered my papers for filing. The man in the Special Sessions Office said that my papers were not in proper order and that I should get a lawyer to put them in order. When I asked what was wrong with my papers he did not say yet he still refused to accept them. I asked him to reject them officially and give them back to me. He refused to reject them also. I went to the Matrimonial Session and they too refused to accept them. I then tried to see a judge (Judge Livoti) and a court officer (Officer Reed) confronted me and said that he would not let me go up to see the judge. I went outside and took the name of the court officer that had directed me to the court room (his name: Officer Stumpf #2222). I got the name of the man in the Matrimonial Session that refused to accept them and I also got the name of the Chief Clerk in the Special Sessions Office that had refused to accept them (Chief Clerk Kaliski, Mr. Krumsiek). A Mr. Hecht was one of the court personnel that I spoke to in my efforts to get my papers filed.

After more than forty minutes of going back and forth and not understanding why my papers were not being accepted I left the court.

I feel that this denial of my right to be heard is part of a conspiracy that involves the defendants in this action.



*Appendix A.*

NOTARY

I, *Robert Calhoun Jr.* do swear that the statements made in this affidavit is true to the best of my recollection.

ROBERT CALHOUN JR.  
Robert Calhoun Jr.

SWORN BEFORE ME WM. MULLER ON  
THE 22ND DAY OF SEPTEMBER, 1975  
NINETEEN SEVENTY FIVE.

WILLIAM MULLER  
Commissioner of Deeds  
City of New York 4-1293  
Certificate filed in New York County  
Commission Expires March 1, 1976  
WILLIAM MULLER